

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

(1) REEDHYCALOG UK, LTD., and  
(2) REEDHYCALOG, LP,

Plaintiffs,

v.

(1) DIAMOND INNOVATIONS, INC.,

Defendant.

Civil Action No. 6:08-cv-00325

Jury Trial Demanded

**PLAINTIFFS' MOTION FOR PREJUDGMENT AND POST-JUDGMENT INTEREST**

Plaintiffs, ReedHycalog UK, LTD. and ReedHycalog, LP, hereby move the Court for both prejudgment interest and post-judgment interest against Defendant, Diamond Innovations, Inc. ("DI"). On June 10, 2010, the jury seated in this case returned a unanimous verdict that DI willfully infringed all nine of the ReedHycalog Patents,<sup>1</sup> and that DI had not proven that the ReedHycalog Patents were invalid.<sup>2</sup> During trial the parties stipulated that, should liability be proven, Plaintiffs' monetary damages for DI's past infringement would be \$1,500,000.<sup>3</sup>

Congress has codified the award of prejudgment interest in patent cases in 35 U.S.C. §284. Prejudgment interest is necessary to ensure that Plaintiffs are placed in the same position that they would have been in had DI paid Plaintiffs the awarded reasonable royalty at the time of infringement. *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655 (1983); *see also Beatrice Foods v. New England Printing*, 923 F.2d 1576, 1580 (Fed. Cir. 1991). The award of

<sup>1</sup> There are nine ReedHycalog Patents at issue in this case: U.S. Patent Nos. 6,861,137, 6,878,447, 6,861,098, 6,601,662, 6,544,308, 6,562,462, 6,797,326, 6,589,640, and 6,749,033. PTX0021, 0023, 0019, 0011, 0001, 0003, 0017, 0007 and 0015, respectively.

<sup>2</sup> The signed jury verdict form is attached as Exhibit \_\_\_\_.

<sup>3</sup> June 8 Trial Transcript, Afternoon, p. 2, l. 18 – p. 4, l. 25.

prejudgment interest properly compensates Plaintiffs for the delay that they experienced in obtaining money that it would have received had DI not infringed. *Central Soya Co. v. Geo. A. Hormel & Co.*, 723 F.2d 1573, 1578 (Fed. Cir. 1983). Prejudgment interest is calculated beginning on the date of infringement and extending through the date of judgment. *Nickson Indus., Inc. v. Rol Mfg. Co.*, 847 F.2d 795, 800 (Fed. Cir. 1988).

It is within the Court's discretion to set the prejudgment interest rate to be used and the frequency of any compounding. Accordingly, Plaintiffs hereby move the Court to award prejudgment interest at the annual prime interest rate compounded annually for the appropriate time period taken from the [www.federalreserve.gov](http://www.federalreserve.gov), as reflected on the attached Exhibit A prepared by Plaintiffs' damages expert, Dr. Stephen Becker. Prejudgment interest on the stipulated \$1,500,000 in damages amounts to \$155,424 through June 30, 2010.

Plaintiffs also request post-judgment interest on all monies that DI is ultimately ordered to pay to Plaintiffs, which may also include enhanced damages and Plaintiffs' attorneys' fees.<sup>4</sup> Plaintiffs respectfully ask this Court to set the post-judgment interest rate at the lawful federal rate pursuant to 28 U.S.C. § 1961.

A proposed order granting the requested relief is attached.

DATED: June 23, 2010

By: /s/ J. Mike Amerson  
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<sup>4</sup> Plaintiffs have concurrently filed a motion asking the Court to enhance damages against DI and to award Plaintiffs their reasonable attorneys' fees.

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 23<sup>rd</sup> day of June, 2010, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile and or U.S. Mail on this same date.

/s/ Cynthia Marple